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3 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
4 IN AND FOR THE COUNTY OF YAKIMA

5 IN THE MATTER OF THE)
6 DETERMINATION OF THE RIGHTS) No. 77-2-01484-5
7 TO THE USE OF THE SURFACE)
8 WATER RIGHTS OF THE YAKIMA)
9 RIVER DRAINAGE BASIN, IN)
10 ACCORDANCE WITH THE PROVISION)
11 OF CHAPTER 90.03, REVISED)
12 CODE OF WASHINGTON,)
13 THE STATE OF WASHINGTON,)
14 DEPARTMENT OF ECOLOGY,)
15 Plaintiff,)
16)
17 v.)
18)
19 JAMES J. ACQUAVELLA, et al.,)
20)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)
29)
30)

ORDER PENDENTE LITE
RE: TEMPORARY
TRANSFER OF SURFACE
WATER RIGHT: SELAH-MOXEE
IRRIGATION DISTRICT TO
INSTREAM FLOW & MITIGATION
FOR POST 1905 WATER USERS

Selah-Moxee Irrigation District
Claim No. 1653

THIS MATTER having come before the Court on the motion of petitioners, Selah-Moxee Irrigation District (SMID) and numerous parties affected by the that ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF WATER SHORTAGE entered herein on June 10, 2004, here-in-after "Post '05 Water Users", for Order Pendente Lite seeking approval by this court for a temporary change of the purpose and place of use of a portion of SMID's water right recommended for approval in the Conditional Final Order-SRID (CFO) filed September 9, 1998 for use by all water users prohibited from using water by virtue of that ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF WATER SHORTAGE entered herein on June 10, 2004. The right proposed for change is

ORDER PENDENTE LITE, TEMPORARY TRANSFER
SMID/UPPER NACHES & TIETON - Page 1 of 4

TALBOTT, SIMPSON, GIBSON & DAVIS, P.S.
308 North Second Street
Post Office Box 590
Yakima, Washington 98907
509-575-7501

based on Claim No. 1653, filed by SMID. The Court having heard from all interested parties and being fully advised.

NOW, THEREFORE, the Court grants the petitioner's request for a temporary transfer of the surface water right as follows:

1. The Selah-Moxee Irrigation District water right, as reflected in the Conditional Final Order filed September 9, 1998, includes the following Warren Act Contract water right:

Priority Date: May 10, 1905

Quantity: 959.4 acre-feet of Warren Act Contract water

Purpose of Use: Irrigation, frost protection, stock water and other agricultural purposes and domestic supply, including irrigation of lawns, gardens & landscaping.

Period of Use: April 1 through October 31, 2004

Point of Diversion: The point of diversion for the Moxee-Hubbard portion of the SMID water right is: 1900 feet south and 400 feet east from the northwest corner of Section 7, being within the SW1/4NW1/4 of Section 7, T. 13 N., R. 19 E.W.M..

Place of Use: Sub-A Lands within the boundary of the Selah-Moxee Irrigation District.

2. The Selah-Moxee Irrigation District water right described above has been applied to beneficial use within the past five years and is not subject to relinquishment. The amount sought for transfer is greatly less than the amount available for transfer. The portion of the above-referenced water right which is the subject of this temporary order is as stated in the attached Water Transfer Memorandum dated June 23, 2004 [Ex. A], which includes a consumptive use calculation and an identification of the specific land within the SMID, from which the water is transferred. That land includes two parcels owned by B & T Gamache bearing parcel numbers 191212-32001 (44.4 irrigated acres) and 191211-14005 (19.1 irrigated acres).

3. A temporary change in purpose and place of use of the above-referenced right is hereby authorized to the following purpose and place of use:

Place of Use: The Yakima, Naches & Tieton Rivers downstream of the various Reclamation storage facilities.

Purpose of Use: Mitigation for out of priority use by the Post '05 Water Users individually for domestic and group or community domestic supply including all domestic uses allowed by the individual post 1905 water users in their respective water right documents.

Quantity: The total quantity to be transferred is 83.84 acre feet of consumptive water use. The demand needed to mitigate the Post-05 domestic water users is 44.1 acre feet of consumptive water.

Period of Use: June 16, 2004 through October 31, 2004.

This authorization does not automatically allow transfer of rights to any individual or group of Post May 10, 1905 water users affected by the ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF WATER SHORTAGE entered herein on June 10, 2004, prohibiting such use. A list of the potentially affected parties is attached. [Ex. B] Relief from that order will only be accomplished by each individual or group Post May 10, 1905 water user making application to reimburse Selah-Moxee Irrigation District for the cost of such water and fees incurred in its transfer. SMID will thereafter provide to Ecology, a list ^{and wTWS} ~~wTS~~ of those users having consummated a transfer, who will then be relieved of the provision of the ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF WATER SHORTAGE. This order does not serve as mitigation for impacts to other water rights on tributary streams. ^{wTS}

4. The consumptive use (CU) portion of the above referenced use is 44.1 acre feet, as stated in the attached Water Transfer memorandum from Ken Mitchell dated July 13, 2004 [Ex. A], and is well within the amount transferred from SMID. The transfer authorized herein will not have a negative impact on TWSA.

5. The operator of each system under this authorization shall:

- Have a copy of the temporary, seasonal authorization.
- Be aware of the parameters and provisions and operate accordingly.

- Provide a copy of this authorization upon request by the Department of Ecology or Fish and Wildlife staff;
- Upon request provide a record of diversion to the Department of Ecology, the United States Bureau of Reclamation or the Department of Fish and Wildlife staff.

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3 6. Water available under this authorization may not provide a firm supply throughout this
4 year. Upon expiration of the temporary change for point of diversion and place of use, the
5 description of the right returns to the recognized place of use by the Conditional Final Order
6 Selah-Moxee Irrigation District signed September 9, 1998.
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9 7. This authorization shall in no way excuse the petitioner from compliance with any
10 applicable federal, state, or local statutes, ordinances, or regulations, including those
11 administered by other programs of the Department of Ecology.
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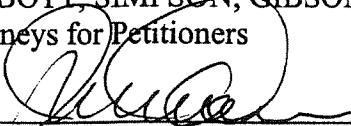
14 8. This order is effective only until October 31, 2004, and does not set a precedent for any
15 water transfers in future years on any issue, including, but not limited to, the validity and
16 extent of the affected water rights. This order shall not be used as evidence of, nor waive any
17 argument concerning future proposed permanent or temporary transfers under either
18 applicable Federal law or contract or state law including RCW 90.03.380. This order, and the
19 transfer it authorizes, are also not intended by any party to be a concession as to the
20 appropriate procedures or parameters for transfers in the future.
21
22

23 DONE IN OPEN COURT this 29th day of July, 2004.
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26 
27 WALTER A. STAUFFACHER, JUDGE
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29

30 Presented by:
31
32

33 TALBOTT, SIMPSON, GIBSON & DAVIS, P.S.
34 Attorneys for Petitioners
35

36 By: 
37 JAMES E. DAVIS, WSBA #5089
38

39 ORDER PENDENTE LITE, TEMPORARY TRANSFER
40 SMID/UPPER NACHES & TIETON - Page 4 of 4
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42 TALBOTT, SIMPSON, GIBSON & DAVIS, P.S.
43 308 North Second Street
44 Post Office Box 590
45 Yakima, Washington 98907
46 509-575-7501
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Water Transfer Memo

TO: Bob Barwin
State of Washington, Department of Ecology

FROM: Ken Mitchell, Civil Eng., Mgr., Selah-Moxee Irrigation District

DATE: July 11, 2004

To address the issues raised regarding a temporary transfer of water rights from Selah Moxee Irrigation District to the Post May 10, 1905 Water Users, prohibited from use of water by virtue of ORDER LIMITING POST-1905 DIVERSIONS DURING PERIODS OF WATER SHORTAGE, entered on June 10, 2004, some research and calculations research have been done. It has been determined that the year 2004 water needs of the Post May 10, 1905 Water Users would be met with a transfer of 147 acre feet of water. Recognized authorities in the water and wastewater field conclude that only a small portion of water used for domestic purposes is actually consumed. Approximately 70% of the water diverted is returned to the local environment (surface runoff and percolation into the groundwater system) and becomes available for reuse. This situation is believed to be applicable to the domestic uses that are the subject of the pending water transfer. Consequently, of the 147 acre feet diverted only 44.1 acre feet will be actually consumed. The remaining 102.9 acre feet will be returned and be available as part of the total water supply available in the Yakima River Basin.

The records of the Selah Moxee Irrigation District were reviewed to determine the location of parcels of land that have proper water rights and are not going to be fully irrigated during the 2004 season. Such parcels were identified as owned by B & T Gamache (parcel 191212-32001 containing 48 acres and parcel 191211-14005 containing 26.5 acres) near the intersection of LaFramboise and Gamache roads. The parcels are established hop fields that will only be given sufficient water, during 2004, to keep the hop plants alive. This practice is referred to as maintenance irrigation and only supplies 6" of irrigation water as compared to 27.88, necessary for full irrigation, as recommended by the Washington Irrigation Guide (WIG). By deducting the 6" of maintenance irrigation that will be applied, and adding 2" CU adjustment for drought conditions, the overall water savings will be 23.88" per acre. The 74.5 acre fields most likely will contribute a water savings of approximately 148 acre feet which is much more than the 44.1 CU acre feet needed.

From a water transfer perspective, it has been determined that water rights described above are available for transfer. It has been determined through actual observation that the parcels are in maintenance irrigation and are receiving only the maintenance irrigation described.

Locations of Post 1905 Domestic Water Users

Class 1
Below Res

Class 2
Above Res

Class 3
Tributaries

ID#
File #

Domestic Units		Minimal Irrigation?		Consumptive Use (gpd/ft)		TRSL		Source	
Class	Res	Priority Dr	subbasin	Person	ID	DS	DS		
40	1	0412	02	Alan C. Runte	02	280	0.12	T19NR14E-02	
42	1	1505	16	Alvin R. Elliott	08/20/1949	280	0.12	T16NR12E-22	
43	1	1885	16	Andrew J. & Shirley A. Dominguez	09/11/1974	280	0.12	T16NR15E-34	
44	1	3	16	Arthur E. Marsh	11/07/1908	280	0.12	T17NR14E-36	
45	1	S4-26926	16	Ballinger Owen	7/3/80	280	0.12	T17NR14E-22	
4	1	S4-29050	16	Bolles Allen	8/19/86	280	0.12	T16NR12E-12	
6	1	S4-27082	16	Campfire Council Yakima Valley	10/10/80	280	1.20	T17NR14E-22	
107	1	0604	02	Cecile B. Woods	11/12/1932	280	0.24	T19NR14E-13	
49	1	0277	16	Charles A. & Helen M. Severn	01/20/1953	280	0.12	T16NR12E-12	
117	1	1325, 3071(A)	16	Cliff Dell Summer Home Association	12/18/1921	52	140	Davison Spring & stream	
51	1	0946	16	David L. Lund	03/17/1982	280	0.12	T16NR12E-12	
52	1	0798	01	David Swap	09/27/1972	280	0.12	T20NR14E-08	
54	1	0553	19	Delmar Day	10/01/1978	280	0.12	Unnamed tributary to th Naches River	
57	1	1937	19	Donald D. Bussey	03/08/1907	280	0.12	T14N/R17E-36	
58	1	0236, 1348 A	16	Dwight K. Paxton	01/30/1967	280	0.12	T13N/R18E-06	
8	1	S4-27770	16	Ford R. Gallant Howard (deceased)	9/3/81	280	0.12	T16NR15E-22	
10	1	S4-27501	16	George & Eleanor Elhart	06/05/1917	280	0.12	WEBB SPRING	
60	1	1324	16	George & Mabel Millard	06/30/1929	280	0.12	Unamed spring	
61	1	0317	16	George and Diane Burchak	12/15/1916	280	0.12	Bumping River	
62	1	5216	05	Gerald D. Alderton	03/08/1907	280	0.12	Unnamed stream	
63	1	2149	19	Gerald Hanning	04/27/1915	280	0.12	Basalt Spring	
64	1	0588	16	Gerard L. Monahan	06/30/1916	32	140	Unnamed spring	
113	1	0994	16	Glen A. Rice	09/26/1945	280	0.12	UNNAMED SPRING	
65	1	0248, 1345A	16	Greg & Miriam/ Deborah D. Hires/Phipps	10/19/1907	280	0.12	T16NR12E-30	
66	1	S4-28758	16	Hargraves Varf	7/25/85	280	0.12	WEBB SPRINGS	
12	1	12325, 3070A	01	H.J. Parker	09/27/1972	280	0.12	Unnamed tributary Cle Elum River	
69	1	0615	05	Jerry E. Murphy	05/24/1965	280	0.12	T16NR15E-10	
70	1	2189	16	Jerry R. & Sally McCullay	03/17/1952	280	0.12	T16NR12E-12	
73	1	3217	16	John & Margaret Forenphar	07/01/1965	280	0.12	Unamed spring	
75	1	0689	16	Keith L. Chilcutt	11/10/1908	280	0.12	Two unnamed springs	
77	1	2325, 3071	16	Kraft James	6/25/80	280	0.12	Gold Creek	
16	1	S4-26850	01	Lake Cle Elum Community Club	06/06/1936	23	140	UNNAMED SPRING	
128	1	0957	01	Landy O. Schubert	09/27/1972	280	0.12	Unamed spring tributary of Lake Cle Elum	
78	1	1800	01	Lawrence B. & Lillian A. Hanan	09/21/1959	280	0.12	Unamed tributary Cle Elum River	
79	1	0280	16	Leavitt Theodore	5/30/86	280	0.12	WEBB SPRING	
18	1	S4-28956	02	Lehmann Et Al Otto	6/1/79	280	0.12	THORNTON CREEK	
19	1	S4-26271	05	Mable Millard	06/30/1929	280	0.12	unnamed spring	
82	1	317	16	Marily Bateman/Lookout Mt. Assoc.	08/16/1969	280	0.24	Pump House Spring	
109	1	1479	04	McGinnis Robert	02/26/88	280	0.12	UNNAMED SPRING	
23	1	S4-29639	16	McGree Michael	6/7/84	280	0.12	T16NR12E-18	
24	1	S4-28473	16	Mellote Jr Theodore	2/23/81	17	280	0.12	T20NR14E-07
25	1	S4-27317	05	Mike Baker	9/20/84	1	2.03	UNNAMED SPRING	
83	1	0463	16	Millier Patricia	6/17/79	280	0.12	T19NR16E-04	
26	1	S4-28536	16	Mrs. Harold Jackson	06/18/1974	280	0.12	WEBB SPRING	
84	1	679	16	Mrs. Lenard (for Ted) Vander Houwen Union C	05/15/1974	280	0.12	T16NR15E-27	
120	1	0531	16	Richard R. Maeson	01/03/1970	7	30	unnamed spring	
27	1	S4-26998	16	Richard Siepmann Koshe Tllicum Club	7/25/80	280	0.12	T17NR14E-36	
87	1	1227	16	Rickey Lewis	04/07/1906	280	0.12	Naches River	
29	1	S4-28556	16	Raynor James	10/29/84	280	0.12	WEBB SPRING	
30	1	S3-21198	16	Recreational Properties Inc	5/24/73	280	0.12	unnamed stream	
105	1	0800	16	Theodore W. & Wanda Mellotte	03/17/1952	16	280	0.12	Webb Spring & stream
89	1	3217	16	Thomas J. Berndt	07/26/1950	16	140	UNNAMED SPRING	
110	1	1306, 1406, 1407, 1408,	16	Tim Jefferson	01/03/1972	280	0.12	unnamed spring	
94	1	1025	16	Truman McGuff	05/07/1931	10	140	T16NR18E-06	
95	1	0230, 0245, 1342A, 1350A, 300A	16	Vernon S. Schmierer	02/11/1914	280	0.12	T16NR14E-34	
96	1	5145	16	W. Kenneth & Leilani McCoy-LaForce	12/11/1950	280	0.12	THELIS CREEK	
97	1	0985	05	Robert A. Eaton	05/16/1950	280	0.12	Unnamed tributary to Clear Creek	
98	1	1184, 1185	16	Robert C. Jr. & Shirley M. Clark	07/22/1968	1	280	T15NR19E-07	
99	1	3217	16	Walter W. & Wanda Mellotte	03/17/1952	16	0.96	Unamed stream	
104	1	0644	16	Walters Stanley	07/24/1933	280	0.12	WEBB SPRING	
41	2	0415	01	William T. Speir	11/24/1974	1	140	Unamed tributary Spring Creek	
2	2	S4-27727	02	Alexander V. Vodolek	07/25/1960	280	0.12	Unamed tributary to Rimrock Lake	
47	2	3501	17	Baker Tom	9/28/81	280	0.12	GALE CREEK	
121	2	1318	17	Burton A. Lehman	05/29/1964	280	0.12	Unamed tributary to Rimrock Lake	
122	2	3217	17	clo Jim Tweedy, Andy Creek Water Users, Inc	11/16/1950	72	30	Andy Creek Tributary to Rimrock Lake	
108	2	0479	17	clo William Bowlin	07/22/1933	280	0.12	Unamed stream	
104	2	0828, 2097(A)	17	Dorothy Egg, Russell Creek Water Users Assn	07/24/1949	DM	0.12	Russell Creek tributary to Rimrock Lake	
112	2	2151	01	Frank Abbott	02/11/1955	DM	3	Unamed tributary Cle Elum River	
13	2	S4-27010	02	Harris Richard	7/30/80	280	0.12	GALE CREEK	
68	2	2198, 3003A, 3102A	17	Herbert P. Watkins	01/04/1956	280	0.01	Unamed stream	
74	2	1026	16	Jim Logan	4/28/1948	280	0.12	Hart Creek	
108	2	140	01	Jim Frazier	6/27/1974	280	0.12	Big Boulder Creek Tributary of Cle Elum River	
17	2	S4-26549	02	Larson Emma	2/13/80	280	0.12	T22NR13E-31	

116	2	2079	17	Louise Potter, Sec., Bear Cove Cabins, Inc	04/21/1939	DM	1.20
21	2	\$4-27383	02	Mayuk Naydane	3/18/81	DS	280
22	2	\$4-26493	16	Mike Masters, Twelve West Resorts	12/3/79	DS	30
129	2	2217	17	Nadine Maykut (Van E. Nutley)	06/03/1946	DM	-
85	2	0164	16	Patrick E. O'Farrell, Hart Creek Summer Hom	02/28/1945	DS	-
114	2	0736	17	Peter P. Horish	05/26/1948	DS	30
88	2	0933	01	Powell James	06/03/1944	DS	35
28	2	\$4-29795	01	Roaring Creek Property Owners Assn.	8/22/88	DS	280
119	2	1291	02	Robert J. Wadsworth	02/17/1989	DS	18
92	2	\$4-28927	01	Silver Cove Summer Home Association	07/27/1945	DS	1
32	2	103	17	Ski Tur Valley Maintenance Company	7/15/80	DM	21
2240	2	00455	02	South First Kachess Summer Homes	12/17/1973	DM	31
93	2	0556	02	Thomas G. Starkovich	05/19/1958	DM	6
99	2	0154, 0794	01	Warren D. Taylor	10/26/1972	DS	1
38	1	\$4-27116	16	West Russell Creek Summer Homes	07/26/1972	DS	1
3	3	\$4-29789	16	Alexander James	8/1/80	DM	280
45	3	118	15	Arthur W. Briscoe	8/10/88	DM	6
46	3	2213	15	Bradley B. Dorsett	06/30/1910	DS	1
106	3	2213	16	Bradley B. Dorsett	08/27/1973	DS	1
123	3	1146	16	Bruce Cob	01/13/1972	DM	2
5	5	\$4-28854	04	Burrows Richard	06/19/1974	DM	2
126	3	126	03	c/o Chuck Tissell Trail's End Lodge	1/2/186	DS	1
127	3	7	1096	c/o Patrick Barry, US Atty, Indian Resources :	06/30/1974	DM	-
3	3	\$4-27373	10	Columbia Cascade Land Co., Inc.	05/25/1950	DM	2
122	3	0483	04	Danny O Arson	06/30/1965	DM	2
50	3	0344	16	Fred Chapman	10/01/1971	DS	1
53	3	1471	04	Del L. Holter	04/19/1960	DS	1
55	3	56	0483	Dennis Mickens	07/24/1953	DS	1
9	3	\$4-27637	03	Don & Jo Anne Osnovonich	05/19/1970	DS	1
111	3	0344	03	Foster Keith	9/1/81	DS	1
59	3	1471	03	Frends B. Forderhouse, et al.	06/28/1973	DM	3
11	3	\$4-26934	04	Fred Chapman	09/30/1974	DS	1
67	3	0401	04	Gorman June	16/728/80	DS	1
14	3	\$4-27588	16	Hazel & George K. Horton	07/24/1950	DS	1
71	3	1867	15	Idahoour Recreation Residence Group	8/1/81	DM	6
72	3	02192	03	Jane Shaw	05/01/1914	DS	1
76	3	2384	11	Jean/Eric & Martha Wheeler/Wickstrom	03/12/1962	DS	1
15	3	\$4-27148	16	John D. & Linda L. Hieholtzer	03/18/1976	DS	1
124	3	01095	04	Johnson Kyle	10/28/80	DS	1
80	3	3	00166	Liberty Mt. Ownership Assoc., Inc.	06/30/1965	DS	5
81	3	\$4-28416	04	Linda Lewis, et al.	07/21/1988	DS	1
20	3	1469	04	Lorraine T. and Jeanna M. Dunning	02/01/1979	DS	1
86	3	3	3	Manning Ruth	3/2/184	DM	2
33	3	\$4-28012	07	Pat Burke	12/10/1907	DS	1
115	3	34-27198	07	Thomas Margit	7/29/82	DS	1
34	3	\$4-26908	10	Timothy Olesey	04/07/1906	DM	4
35	3	34-27556	11	USFS Wenatchee	1/1/27/80	DM	-
37	3	100	16	USFS Wenatchee	7/1/80	DM	-
39	3	2050, 2051	16	West Jr. Stephen	6/18/81	DS	1
101	3	\$4-27589	04	Wilma Preston	06/26/1974	DS	1
335	3	2355	22	Worrell Thomas	8/10/81	DS	1
101	3	Yakima Homestead Partnership	22	Yakima Homestead Partnership	07/03/1913	DS	1

Total 44.01

Class 1
Class 2
Class 3

18.77
12.88
12.30

Post '05 Water Users Requesting Relief

Class 1 Below Res.	Class 2 Above Res.	Class 3 Trib	ID No.	Class	File No.	Name	Subbasin	CU gpd/lot	CU ac-ft	lots
35	3	S4-26908	Amer. Forks/USFS	16	140	1.25	21			
77	1	2325.3070A	Chilcutt, Keith	16	280	0.12	1			
116	2	2079	Bear Cove Cabins	16	140	1.2	50			
42	1	412	Dilger	16	280	0.12	1			
8	1	S4-27770	Elliott, Alvin	16	280	0.12	1			
10	1	S4-27501	Ford, Robt.	16	280	0.12	1			
114	2	736	Gallant, Betty	16	280	0.12	1			
79	1	280	Hart Creek	17	140	0.45	35			
67	3	401	Henam, L. & L.	16	280	0.12	1			
97	1	153	Horton, Bob	16	280	0.12	1			
89	1	800	LaForce, Ken	16	280	0.12	1			
73	1	3217	Manka. Richard	16	280	0.12	1			
105	1	3217	McCully/Sveen	16	280	0.12	1			
26	1	S4-28536	Mellotte	16	280	0.24	2			
			Miller, Patricia	16	280	0.12	1			
			Rasmussen	16	280	0.12	1			
65	1	994	Rasmussen	16	280	0.12	1			
49	1	277	Rice, Glen	16	280	0.12	1			
103	2	2240	Severn, Ken	16	280	0.12	1			
32	2	S4-26927	Ski Tur	2	140	0.12	31			
118	2		Silver Cove	17	140	1.25	21			
			So First Kachess	2	140	0.36	6			
						6.55	180			